

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

NEW MEXICO CATTLE GROWERS ASSOCIATION, <i>et al.</i> ,)	
)	Case No. 1:13-cv-00506-JAP-KBM
)	
Plaintiffs,)	<u>CORRECTED</u> STIPULATION OF
)	DISMISSAL AND [PROPOSED]
v.)	ORDER
)	
S.M.R. JEWELL, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

This Stipulation is entered into by and between the New Mexico Cattle Growers Association, Jim Chilton, New Mexico Farm & Livestock Bureau, New Mexico Federal Lands Council, and Texas Farm Bureau (collectively “Plaintiffs”) and Defendants, Sally Jewell, Secretary of the Interior, Daniel M. Ashe, Director, U.S. Fish and Wildlife Service, the United States Department of the Interior, and the U.S. Fish and Wildlife Service (collectively “the Service” or “Defendants”):

WHEREAS, the Service has listed gypsum wild buckwheat as a threatened species under the Endangered Species Act (“ESA”);

WHEREAS, the Service has listed the black-capped vireo, Kuenzler hedgehog cactus, lesser long-nosed bat, and Tobusch fishhook cactus as endangered species under the ESA;

WHEREAS, on or about July 11, 2012, the Service received a petition by Plaintiffs under the ESA to delist gypsum wild-buckwheat and downlist the remaining four species from endangered to threatened;

WHEREAS, on May 31, 2013, Plaintiffs filed their Complaint, alleging that the Service violated the ESA and the Administrative Procedure Act (“APA”) by failing to make a timely finding on their petition;

WHEREAS, pursuant to 16 U.S.C. § 1533(b)(3)(A), the Service submitted to the Federal Register a finding responding to Plaintiffs’ petition, 78 Fed. Reg. 55046 (Sept. 9, 2013);

NOW, THEREFORE, IT IS STIPULATED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), the undersigned parties hereby stipulate to the voluntary dismissal of all claims in Plaintiffs’ Complaint with prejudice.
2. As part of this dismissal, Defendants agree to pay Plaintiffs reasonable attorneys’ fees and costs pursuant to section 11(g) of the ESA, 16 U.S.C. § 1540(g). Defendants therefore agree to settle all of Plaintiffs’ claims for costs and attorneys’ fees in this matter for a total of \$4,500. A check will be made payable in that amount to Pacific Legal Foundation, 930 G St., Sacramento, California 95814.
3. Plaintiffs agree to furnish Defendants with the information necessary to effectuate payment pursuant to paragraph 2 and to hold the United States harmless for any loss caused by following this authorization and direction, if any loss should occur. Defendants agree to submit all necessary paperwork for the processing of the attorneys’ fees award to the Department of the Treasury’s Judgment Fund Office, pursuant to 16 U.S.C. § 1540(g)(4), within ten (10) business days of receipt of both the Order approving this stipulation and the information from the Plaintiffs described in the preceding sentence.

4. Plaintiffs agree to accept payment of \$4,500.00 in full satisfaction of any and all claims for attorneys' fees and costs of litigation in this matter. Plaintiffs agree that receipt of this payment from Defendants shall operate as a release of Plaintiffs' claims for attorneys' fees and costs in this matter.

5. No provision of this Stipulation shall be interpreted as, or constitute, a commitment or requirement that Defendants take action in contravention of the ESA, the APA, or any other law or regulation, either substantive or procedural. Nothing in this Stipulation shall be construed to limit or modify the discretion accorded to the Service or Defendants by the ESA, the APA, or general principles of administrative law.

6. Nothing in this Stipulation shall be interpreted as, or shall constitute, a requirement that the Defendants are obligated to pay any funds exceeding those available, or take any action in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other appropriations law.

7. The parties agree that this Stipulation was negotiated in good faith and that this Stipulation constitutes a dismissal of claims that were denied and disputed by the parties. By entering into this Stipulation, the parties do not waive any claim or defense.

8. The undersigned representatives of each party certify that they are fully authorized by the party or parties they represent to agree to the Court's entry of the terms and conditions of this Stipulation and do hereby agree to the terms herein.

9. The terms of this Stipulation shall become effective upon entry of an order by the Court ratifying the Agreement.

DATED: October 24, 2013

Respectfully submitted,

/s/ A. Blair Dunn

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